

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 51-007-14-1-5-20571-15
Petitioners: Rosemary Harder
Respondent: Martin County Assessor
Parcel: 51-03-24-100-027.000-007
Assessment Year: 2014

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, finding and concluding as follows:

PROCEDURAL HISTORY

1. The property under appeal is located at Bramble Road in Loogootee. Rosemary Harder filed a Form 130 petition challenging the 2014 assessment. On October 9, 2015, the Martin County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property as follows:

2014: Land: \$12,900 Improvements: \$0 Total: \$12,900
2. Ms. Harder timely filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On April 25, 2017, Jacob Robinson, our designated administrative law judge (“ALJ”), held a hearing. Neither he nor the Board inspected the property.
3. Ms. Harder appeared pro se. Kirk Reller appeared as a local government representative for the Assessor. Ms. Harder, Mr. Reller, and Martin County Assessor Carolyn S. McGuire, were sworn as witnesses.

RECORD

4. The official record for this matter contains the following:
 - a. A digital recording of the hearing
 - b. Exhibits

Respondent Exhibit 1: Property record card for the subject property
Respondent Exhibit 2: Form 115 determination dated 10/09/2015
Respondent Exhibit 3: Spreadsheet entitled “Perry Township Vacant Land Sales”

- Respondent Exhibit 4: INTERNATIONAL ASS'N OF ASSESSING OFFICERS, GLOSSARY FOR PROPERTY APPRAISAL AND ASSESSMENT 11, with definition of "Arm's-Length Transaction" highlighted
- Respondent Exhibit 5: Excerpt from SRI Incorporated presentation, "County Tax Sales and Foreclosure Sales" (2 pages)
- Respondent Exhibit 6: Sales Validation Codes
- Respondent Exhibit 7: *Ramos v. Dep't of Local Gov't Fin.*, pet. no. 45-001-02-1-5-00504 (IBTR, Dec. 12, 2005)

- Board Exhibit A: Form 131 petition
- Board Exhibit B: Hearing notice
- Board Exhibit C: Hearing sign-in sheet

c. These Findings and Conclusions

SUMMARY OF CONTENTIONS

5. Ms. Harder's case:

- a. The 4.10-acre tract has no access to a public road. Ms. Harder unsuccessfully tried to negotiate an access easement with two of the neighboring property owners. Without an easement to access the property, it is not worth \$12,900. Someone from the Farm Services Agency ("FSA") visited the property and told Ms. Harder that little could be done with it. The area is bushy and has ponds that need to be drained. The former owner's pigs may have created the ponds. Ms. Harder also needs to remove debris left behind from an old hog barn and tires, but she cannot access the property to do that. *Harder testimony.*
- b. Ms. Harder believes that the Assessor improperly classified the property as residential. As far as she knows, it has always been a farm. The Day family owned it for generations, and it was farm ground the whole time. The FSA listed it as a farm tract and assigned it a number. *Harder testimony.*

6. The Assessor's case:

- a. The 2014 assessment is presumptively accurate. The Assessor valued the land as "residential excess" with a standard base rate of \$3,500/acre. She then applied a negative influence factor of 10%, making the effective base rate \$3,146/acre. The Assessor has classified the property as residential since at least 2011; it is not something that changed for the 2014 assessment. *Reller testimony; Resp't Ex. 1.*
- b. Ms. Harder bought the property at tax sale, which was not an arm's-length transaction. The Board has recognized as much, holding that tax sales do not constitute competitive and open markets, and that the resulting sale prices are not probative evidence of market value-in-use. *Resp't Exs. 4-7; Reller argument (citing*

Ramos v. Dep't of Local Gov't Fin., pet. no. 45-001-02-1-5-00504 (IBTR, Dec. 12, 2005).

- c. The Assessor's witness, Kirk Reller, identified 42 vacant land sales from Perry Township between 2010 and 2016. Of those, 13 were within two miles of Ms. Harder's property and six occurred within the 12 months preceding the March 1, 2014 valuation date. The median and mean sales prices for the 42 properties were \$14,258 and \$21,857, respectively. *Reller testimony; Resp't Ex. 3.*

BURDEN OF PROOF

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.
8. Indiana Code § 6-1.1-15-17.2, also known as the burden shifting statute, creates an exception to that rule where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) a successful appeal reduced the previous year's assessment below the current year's level, regardless of the amount. I.C. § 6-1.1-15-17.2. Under those circumstances, the assessor has the burden of proving the assessment is correct. *Id.* If she fails to do so, it reverts to the previous year's level or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
9. Ms. Harder's assessment decreased by \$100 from 2013 to 2014 and she agreed that she has the burden of proof.

ANALYSIS

10. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost, sales-comparison, and income approaches are three generally accepted techniques to determine true tax value. MANUAL at 2. Parties to an assessment appeal may offer any evidence relevant to a property's true tax value as of the valuation date, including an appraisal prepared in accordance with generally recognized appraisal principles. MANUAL at 3. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for 2014 assessments was March 1, 2014. I.C. § 6-1.1-4-4.5(f).

11. Ms. Harder claimed that the property was assessed too high in light of its lack of access. That lack of access undoubtedly affects the property's value, but Ms. Harder failed to offer any market-based evidence to quantify the extent to which it does so. Although the Assessor contended that the price Ms. Harder paid at tax sale lacked probative value, Ms. Harder never actually claimed that the sale price reflected the property's value.
12. But Ms. Harder asserted an alternative ground for relief, claiming that the Assessor misclassified the land as residential when it is actually agricultural. Normally, simply showing a classification error would not make a prima facie case for changing an assessment. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). Instead, the party must offer the types of market-based evidence described above. *See id.*
13. That general principle, however, does not apply to land used for agricultural purposes. The Department of Local Government Finance ("DLGF") has promulgated guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 76-104; I.C. § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 GUIDELINES, ch. 2 at 77-78; *see also* I.C. § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. They also classify agricultural land into various types. Depending on the land type, assessors may then apply influence factors in predetermined amounts. GUIDELINES, ch. 2 at 85-96, 98-100. Thus, for agricultural land, true tax value is the amount determined by applying the Guidelines, and a taxpayer may make a case by showing that her land was misclassified and should properly be classified and assessed as agricultural.
14. During the year at issue in this appeal, Indiana Code § 6-1.1-4-13 provided, in relevant part:
 - (a) In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use.
 - ...
 - (d) This section does not apply to land purchased for industrial, commercial, or residential uses.

I.C. § 6-1.1-4-13 (2014 repl. vol.). The DLGF offers further guidance through the 2011 Guidelines:

Unless provided elsewhere in the law, the Manual, or Guidelines, the parcel's size does not determine the property classification or pricing method for the parcel. Rather, the property classification and pricing method are determined by the property's use or zoning.

...

Therefore, the controlling factors that determine whether land is to be assessed as agricultural land are whether the land was purchased for a nonagricultural use, and whether the land is currently used or zoned for an agricultural purpose.

Other References

a. Assessors are further directed that all acres enrolled in programs of the United States Department of Agriculture (USDA), Farm Services Agency, and Natural Resources Conservation Service and have received a “farm number” are eligible for classification as “agricultural.” Those acres have been determined by those administering federal programs to be a part of an “agricultural operation.” This applies to non-homestead acreage.

...

Other Agricultural Uses

a. A 40 acre parcel, which at one time was a small farm, has since become a mixture of small, scattered trees and brush with less than 50% canopy cover. The assessor classified this parcel as residential excess acreage; the effect of which created a higher assessed value and tax burden than the agricultural soil productivity method.

Conclusion: The current owner purchased the parcel as an agricultural property many years ago. The land is currently uncultivated or fallow, but has not changed use nor been re-zoned. This parcel should continue to be classified as agricultural as it was purchased for agricultural use and is used as “non-tillable land” as defined in the Guidelines.

GUIDELINES, ch. 2 at 78-82.

15. This is a close case. The Guidelines focus, in part, on the owner’s intent when buying a property. Ms. Harder said nothing specifically about her plans for the property when she bought it, but she did testify without rebuttal that the property had always been used as a farm. She did not do anything different with the property after she bought it, nor could she have, given the lack of access. It appears that Ms. Harder at least explored continued agricultural use, as evidenced by her discussions with the FSA representative. She also testified that the FSA classified the property as agricultural and assigned it a number, although she did not offer any documents to show the specific program(s) in which the property was enrolled. Given the DLGF’s guidance, Ms. Harder’s testimony is enough, if only barely, to make a prima facie showing that the property was devoted to agricultural use.
16. The fact that the Assessor classified the property as residential during the three years leading up to the assessment date under appeal does little to rebut that showing. We therefore find that the property should be classified as agricultural and assessed using the soil-productivity method outlined in the Guidelines.

FINAL DETERMINATION

17. Ms. Harder proved that the Assessor improperly classified and assessed her property as residential instead of agricultural. We find for Ms. Harder and order the Assessor to change the property's classification to agricultural and to assess it using the Guidelines' soil-productivity method. In doing so, she must use the appropriate agricultural base rate and the applicable influence factors from the Guidelines.

ISSUED: July 11, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.